

STATE OF MICHIGAN
COURT OF APPEALS

BUILDING COMMUNICATIONS, INC.,

Plaintiff/counterdefendant-
Appellant,

v

INTERNATIONAL CONNEX, INC.,

Defendant/counterplaintiff-
Appellee.

UNPUBLISHED

July 1, 2003

No. 237547

Macomb Circuit Court

LC No. 00-000736-PD

Before: Griffin, P.J., and Murphy and Jansen, JJ.

PER CURIAM.

Plaintiff/counterdefendant, Building Communications, Inc. [hereinafter “BCI”], appeals as of right a judgment in favor of defendant/counterplaintiff, International Connex, Inc. [hereinafter “ICI”]. We affirm.

BCI first argues that the trial court erred as a matter of law in its interpretation of the standard for intentional interference with a business relationship, and erred in its findings of fact. We disagree. A trial court’s factual findings are reviewed for clear error, and questions of law are reviewed de novo. *Townsend v Brown Corp*, 206 Mich App 257, 265; 521 NW2d 16 (1994). The appellate court must defer to the trial court’s superior position to observe witnesses and evaluate credibility. *Lasser PC v George*, 252 Mich App 104; 651 NW2d 158 (2002). Clear error exists when after review of the record, the appellate court is left with a firm and definite conviction that a mistake was made. *Lasser PC*, *supra*.

To establish a claim of tortious interference with a business relationship, a plaintiff must prove: (1) the existence of a valid business relationship or expectancy; (2) knowledge of the relationship expectancy on the part of the defendant; (3) an intentional interference inducing or causing a breach or termination of the relationship or expectancy; and (4) resultant damage to plaintiff. *Mino v Clio School Dist*, 255 Mich App 60, 79-80; 661 NW2d 586 (2003).

In its opinion and order, the trial court stated:

The basic elements which establish a prima facie tortious interference with a business relationship are the existence of a valid business relation (not necessarily evidenced by an enforceable contract) or expectancy; knowledge of the

relationship or expectancy on the part of the interferer; an intentional interference inducing or causing a breach or termination of the relationship or expectancy; and resultant damage to the party whose relationship or expectancy has been disrupted. Winiemko v Valenti, 203 Mich App 411, 416; 513 NW2d 181 (1994). One is liable for commission of this tort who interferes with business relations of another, both existing and prospective, by inducing a third person not to enter into or continue a business relation with another. Id.

The trial court concluded that ICI's intentional interference failed to induce or cause a breach or termination of BCI's business relationship or expectancy, and the record did not indicate that BCI lost any business as a result of ICI switching BCI's websites. More importantly, the trial court also found that BCI had failed to provide evidence of damages.

Upon review of the record, this Court finds that the trial court applied the correct legal standard for tortious interference with a business relationship. The trial court correctly concluded that, as a result of ICI's intentional interference, BCI did not terminate a business relationship or expectancy, and did not provide evidence of damages. When the website problems occurred, BCI's web page was down for about 2 1/2 days and the customer service staff at BCI did not have access to their e-mail. However, during that 2 1/2 day period that BCI experienced problems, its system was still working. Absent BCI's web page, its customers could still get in touch with BCI. Therefore, deferring to the trial court's superior position to observe witnesses and evaluate credibility, we conclude that the trial court did not clearly err in its findings regarding tortious interference with a business relationship, and did not erroneously apply the law.

BCI argues that the trial court erred in its findings because the evidence established that ICI breached the contract and forced BCI to incur extra repair costs. The trial court found:

After reviewing the record, the Court is persuaded the problems which arose after [ICI] completed the project were largely caused by the changes demanded by [BCI]. For example, the record reflects that the alterations caused the Mantis software to improperly function, as the software was too large for the section of the server plaintiff wanted it in. [BCI] thereafter wanted [ICI] to fix the problem, but without compensation. When [ICI] refused, the relationship ended.

Based on the foregoing, and particularly on the highly credible testimony of Mr. Crisman, the Court is convinced [ICI] did not breach the contract. The contract's terms clearly state [BCI] was responsible for the third-party software (i.e. Mantis) and *all expenses associated therewith*. Moreover, the terms clearly indicate any additional work or supplies provided by [ICI] would be considered separate projects with separate pricing structures. The Court finds it unpersuasive that the network system's problems, which were caused by [BCI's] changes, should be remedied by ICI for free.

The trial court did not err in its findings because the evidence shows that ICI did not breach the contract. ICI made a system that would accomplish what BCI requested. Everything ICI provided to BCI met the terms of the contract. The Mantis program was sent to Mantis to install. Mantis failed to install the program, not ICI. The installation failed due to the size of

Mantis' software, and ICI told BCI that it could fix the problem for an additional \$1,500. Mantis asked ICI to help them install the server, and ICI set up the system so it was adequate to handle the loading of the Mantis system.

Therefore, we conclude that the trial court did not err in finding that ICI did not breach the contract. The evidence shows that it was not ICI's fault that Mantis did not work, but rather, it was Mantis' fault, and ICI accomplished all of the objectives pursuant to the contract.

BCI argues that the evidence established that BCI was damaged by having to fix its email system, domain, and web page and by paying its employees during downtime due to ICI's tortious interference. As stated above, BCI's web page was down for about 2 1/2 days. Although the customer service staff did not have access to their e-mail during that 2 1/2 day period, its system was still working and BCI's customers could still get in touch with BCI. BCI failed to show that it was damaged by ICI's alleged intentional interference.

BCI also argues that the trial court erred in finding that the network system was operating properly. The evidence established that ICI made a system that would accomplish what BCI requested. Everything ICI provided to BCI met the terms of the contract. It was the installation of Mantis that caused the system to fail due to the size of the Mantis software. The system was operational two weeks after ICI started working. Delays occurred once Mantis started installing its software because Mantis failed in its attempt to install the software. We conclude that the trial court did not err in finding that the network system that ICI designed was operating properly.

BCI further argues that the trial court erred in failing to find facts specifically and to state separately its conclusions of law. The findings and conclusions as to contested matters are sufficient if brief, definite and pertinent, without over-elaboration of detail or particularization of facts. MCR 2.517(A)(2); *Fletcher v Fletcher*, 447 Mich 871, 883; 526 NW2d 889 (1994). Findings are sufficient if it appears that the trial court was aware of the issues in the case and correctly applied the law. *Triple E Produce Corp v Mastronardi Produce, Ltd*, 209 Mich App 165, 176; 530 NW2d 772 (1995).

After reviewing the trial court's opinion and order, we find that the trial court was aware of the issues in the case and correctly applied the law. The trial court gave brief and definite facts. The trial court began its opinion with a "brief recitation of the pertinent facts." Additionally, throughout its legal analysis, the trial court cited testimony and evidence from the trial to support its conclusions. Therefore, we conclude that the trial court properly stated its findings of fact and conclusions of law in accordance with MCR 2.517.

BCI next argues that it provided sufficient evidence to establish claims against ICI for breach of express and implied warranties. The statute on breach of express warranties, MCL 440.2313, provides, in part:

(1) Express warranties by the seller are created as follows:

(a) An affirmation of fact or promise made by the seller to the buyer which relates to the goods and becomes part of the basis of the bargain creates an express warranty that the goods shall conform to the affirmation or promise.

(b) A description of the goods which is made part of the basis of the bargain creates an express warranty that the goods shall conform to the description.

(c) A sample or model which is made part of the basis of the bargain creates an express warranty that the whole of the goods shall conform to the sample or model.

The breach of implied warranty of fitness for a particular purpose statute, MCL 440.2315, provides:

Where the seller at the time of contracting has reason to know any particular purpose for which the goods are required and that the buyer is relying on the seller's skill or judgment to select or furnish suitable goods, there is unless excluded or modified under the next section an implied warranty that the goods shall be fit for such purpose.

The breach of implied warranty of merchantability statute, MCL 440.2314, provides, in relevant part:

(2) Goods to be merchantable must be at least such as

(a) pass without objection in the trade under the contract description; and

b) in the case of fungible goods, are of fair average quality within the description; and

(c) are fit for the ordinary purposes for which such goods are used

The trial court found that after ICI completed the project, the network system was operating properly and in accordance with the terms of the contract, and BCI's breach of warranty claims are without merit. Similarly, this Court finds that the trial court did not err in its findings regarding ICI's breach of warranty claims. The testimony at trial established that ICI provided BCI everything that was in the contract. The installation of Mantis caused BCI's system to fail due to the size of the Mantis software. ICI completed all of its responsibilities pursuant to the contract. The fact that Mantis did not work was no fault of ICI. Additionally, when Planet Solutions, a system and network consulting firm, first arrived, it admitted that BCI's system was operational. Therefore, the trial court did not err in finding that BCI's breach of warranty claims are without merit.

BCI next argues that the trial court erred in awarding a judgment in favor of ICI on its counterclaim because the installation of Mantis and Verabill software was an essential part of the contract and ICI failed in its installation, and materially breached its contract with BCI. As stated above, Mantis installed the program on BCI's system, but failed in its attempt. ICI told BCI that ICI would fix Mantis' problem for an additional \$1,500. The price increased as a result of additional work ICI performed that was not in the original contract. ICI completed all of its responsibilities pursuant to the original contract. ICI sent BCI a bill for \$30,000 for the work done, plus \$3,000 for the cost of software licenses. BCI only paid ICI \$27,000. Therefore,

because ICI completed the contract and BCI failed to fully compensate ICI, the trial court did not err in awarding a judgment of \$6,128 in favor of ICI on its counterclaim.

BCI next argues that the trial court erred in failing to grant a remittitur of judgment on ICI's counterclaim in the amount of \$2,199. A trial court's ruling on a motion for remittitur is reviewed for an abuse of discretion. *Palenkas v Beaumont Hosp*, 432 Mich 527; 443 NW2d 354 (1989).

Evidence existed to support the \$6,128 award to ICI. BCI paid ICI \$27,000 for work performed on BCI's network. However, ICI performed extra work that was added to the contract which made the price increase from \$22,390 to \$33,000. ICI additionally purchased licenses needed for BCI's software which cost about \$3,000. Because ICI already installed the software, set it up, and configured it for BCI, ICI had a responsibility to insure that BCI got the licenses. Licenses are required for the use of the software because it was copyrighted software. ICI bought the licenses as a result of the contract, and paid \$3,000 for them. Gerald Ludwick, BCI president, told Neil Crisman, ICI president, that he did not want the licenses after ICI had already purchased them. Because BCI only paid ICI \$27,000 and the testimony at trial established that the bill for ICI's work and expenditures came to \$33,000, the trial court did not err in awarding ICI damages in the amount of \$6,128. Accordingly, the trial court did not abuse its discretion in denying BCI's motion for remittitur.

Affirmed.

/s/ Richard Allen Griffin
/s/ William B. Murphy
/s/ Kathleen Jansen